IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION NO.9932 OF 2002

For Approval and Signature:

HON'BLE MR.JUSTICE RAVI R.TRIPATHI

==========

1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

DHANLAXMIBEN LILADHAR SUCHAK

Versus

DIRECTOR OF AYURVED, GUJARAT STATE & ORS.

Appearance:

1. Special Civil Application No. 9932 of 2002

MR. K.G. PANDIT for Petitioner

MR. M.S. RAO, AGP for Respondent Nos. 1-3

DS AFF.NOT FILED (R) for Respondent No. 4

CORAM : HON'BLE MR.JUSTICE RAVI R.TRIPATHI

Date of decision: 15/03/2004

ORAL JUDGEMENT

1. The present petition is filed seeking a direction against the respondents to comply with the judgement dated 8th April, 1992 rendered by this Court in Special

Civil Application No.7016 of 1989. The petitioner was to get all benefits in view of the judgement of this Court in Special Civil Application No.3238 of 1978, 6166 of 1983 and 803 of 1986 as the Resolution dated 11th February, 1978 was quashed and set aside by this Court. It is also prayed in this petition to give a direction to the respondents to make the payment to the petitioner with 18% interest from the date of her retirement i.e. 31.5.1984, till the realisation of the amount of provident fund, gratuity, pensionary benefits and other consequential benefits calculated on the basis of the pay scale of Rs.380-560 with effect from 1.1.1973.

2. Heard Mr.K.G.Pandit, learned Advocate for the petitioner, and Mr.M.S.Rao, learned AGP for the respondent-State. Having heard the learned Advocate for the petitioner and having gone through the record of the case, the petition is required to be dismissed on the sole ground that it suffers from suppressio vari and suggestio falsi. It is specifically stated in the affidavit filed by Mr.R.S.Vasava, Administrative Officer (Class-I), Directorate of Indian System of Medicine and Homeopathy, Gandhinagar that,

> "I say and submit that by order dated 8.4.1992 in SCA No.7016 of 1989 this Hon'ble Court allowed the said petition of the petitioner and directed the respondents to give the benefit of revised pay scale of Rs.380-560 to the petitioner from 1.1.1973 to 31.5.1984 and also directed to fix the pay of the petitioner and thereupon pay the difference of arrears of pay on refixation. In pursuance of the said order the competent authority refix the pay of the petitioner for the above mentioned period and thereupon made her payment of Rs.10,557.25 on 7.7.1992 being difference in salary for which the petitioner has passed on the receipt. The copy of the said receipt is annexed hereto and marked as Ann.1. However, for the reasons best known to the petitioner, she has not bothered to mention about the same and stated that the Respondents have not complied with". (emphasis supplied)

3. While arguing the matter, Mr.K.G.Pandit, the learned Advocate for the petitioner, emphatically submitted that this amount was not paid to the petitioner on 7th July, 1992 and it was only on 21st June, 2003 that the petitioner was made the payment after an order was passed by this Court in this matter. Mr.Pandit reiterated that on 7th July, 1992, the petitioner was not

paid anything and it was paid only on 21st June, 2003 i.e. after this Court (Coram:Jayant Patel, J.) passed an order on 24th March, 2003 and this Court (Coram:P.B.Majmudar, J.) passed an order on 20th June, 2003. In this connection, Mr.Pandit pointed out a receipt dated 21st June, 2003 annexed to the affidavit-in-reply.

4. Mr.M.S.Rao, learned AGP, pointed out from the papers that the amount was paid to the petitioner on 7th July, 1992. In fact, B.T.R. Form No.18 along with a receipt executed on a revenue stamp on the same form is annexed to the affidavit-in-reply. Perusal of the document shows that it was prepared on 10th June, 1992 and payment was made on 7th July, 1992.

5. Despite the aforesaid fact, a grievance is made before this Court in this petition that the Department has not acted upon the judgement of this Court dated 8th April, 1992. Not only that, the Department is also accused of having not taken any action in the matter after the said judgement wherein the respondents were directed to give the benefits of the revised pay scale of Rs.360-560 to the petitioner for the period from 1st January, 1973 till 31st May, 1984 (the date on which she retired on superannuation). As the respondents were directed to fix the pay of the petitioner and to pay the difference of arrears of pay on refixation within four weeks form the date of receipt of writ in this case or from production of a certified copy of this judgement by or on behalf of the petitioner, whichever occurs earlier, the matter required an urgent action on the part of the respondents and `non-action', that too, willful if any, warranted a serious view and action in the matter. But then, the facts are found otherwise.

6. From the facts of the case, it cannot be said that there is a deliberate inaction on the part of the respondents. On the contrary, an attempt is made by the petitioner to create an impression before the Court that the Department has slept over the judgement of this Court dated 8th April, 1992 untill the present petition was moved and the Court passed orders on 24th March, 2003 and 20th June, 2003 in this matter. Such an attempt on the part of the petitioner requires to be condemned. But, for the fact that the petitioner is a widowed lady, the orders for costs are not passed. The petition is dismissed on the sole ground of suppressing the material fact. Rule is discharged with no order as to costs.

(Ravi R. Tripathi, J.)

kamlesh*